MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 18, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Gene Carroll, Dick Esseks, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor (Melinda Pearson absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Greg Czaplewski and Jean Walker of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held January 4, 2006. Motion for approval made by Strand, seconded by Carroll and carried 8-0: Carlson, Carroll, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'; Pearson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: January 18, 2006

Members present: Carlson, Carroll, Esseks, Krieser, Larson, Strand, Sunderman and Taylor; Pearson absent.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 05086, STREET AND ALLEY VACATION NO. 05012; and STREET AND ALLEY VACATION NO. 05013.**

Ex Parte Communications: None.

Taylor moved to approve the Consent Agenda, seconded by Strand and carried 8-0: Carlson, Carroll, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'; Pearson absent.

CHANGE OF ZONE NO. 05078,
TO AMEND TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING
TO THE THEATER POLICY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 18, 2006

Members present: Krieser, Taylor, Esseks, Sunderman, Strand, Carroll, Larson and Carlson; Pearson absent.

Staff recommendation: Denial

Ex Parte Communications: None.

Additional information submitted for the record: Brian Will of Planning staff submitted a letter in opposition from the Near South Neighborhood Association, and a corrected ordinance to adjust the effective dates and other corrections to make the ordinance language consistent, i.e., the definition of "theaters" has been changed to "indoor movie theaters".

Proponents

1. Jon Camp, member of the **Lincoln City Council,** appeared as the applicant. He stated that he comes with mixed feelings because last summer there was an issue before the Council in regard to the expansion of multi-plexes. Based upon the discussion at that time, he believes it is important to go through the process and come up with a definitive statement on what Lincoln wants in the future as far as the Downtown Theater Policy. He acknowledged that he is one of the largest proponents of Downtown.

In the past, the zoning ordinance has said that Downtown is the only place where there can be over six screens (multi-plexes). The purpose of this application is to review that measure and essentially end the existing Downtown theater policy seven years from now, on January 1, 2013. It should not be ended any sooner nor later. The reason he chose seven years is that it is fairly consistent with the commitments the city has made to the present multi-plex theater operator in the Downtown.

Camp explained that there are other overriding policies that have prompted him to bring this forward. One is giving the business community and the patrons a sense of certainty. We do have a number of six-plexes around the city and there is a desire to have one in the north part of Lincoln. How is the business owner going to make a multi-million dollar investment in the future not knowing whether the rules might change? Allowing a seven year time frame gives the business community an opportunity to make a wise decision on whether it chooses to invest. This time frame also allows a participant in the business community/movie industry to look into the future with a definitive point in time at which the limit on the number of screens

would change. In that manner we, as a city, reaffirm our current policy for seven years to promote and assist Downtown Lincoln to help it continue to revitalize itself. At that time, he believes the existing policy should no longer be in effect. This would allow the present operator and others to plan ahead.

Camp posed the questions: Is it best to continue the policy as is? Or should we set this termination date?

Besides the sunset in seven years, Carroll wondered about the permitted use in B-5, which would allow multiple owners of different screens in the B-5 district, versus the special permit as it is now. Camp responded, stating that from the free market standpoint, if operators want to compete, he does not have difficulty with that. However, if we look at the broader horizon in the theater industry, it is not just theaters but the venue. There are many other venues with new technology. Part of the purpose of this amendment is to take out government intervention.

Carroll inquired again about the difference between permitted use and special permit. Camp indicated that he is open to either process. Marvin Krout, Director of Planning, explained that the ordinance is drafted with the intent to treat it as a permitted use like all other retail, entertainment, and restaurant-type uses that are permitted in the B-5 district. Having a special permit has been subjecting each theater request to an individual review. He thought the intent of what was being requested was to treat it like all other uses. That is the way the ordinance has been drafted.

Esseks suggested that the implications of Mr. Camp's testimony include that we should currently protect the Downtown for multi-screen complexes, but he assumes that at the end of the seven year period there will no longer be a need for that protection. Camp agreed that to be a piece of the picture. Many years ago, we decided to have a Downtown policy to help and encourage development Downtown. It is a certain form of government intervention. He is interested in seeing Lincoln send the message that we are going to defer to the private market place as much as possible.

Esseks pondered whether this might preclude some other investor from coming to the Downtown because they know that after seven years there will not be that privileged provision Downtown. Camp noted that in the present situation they have to apply for a permitted use. Last year, we witnessed a prior entity who tried and backed out. He is a strong enough believer in the market place -- there are so many competitive forces that businesses will evaluate on that basis.

As far as allowing potential developers to make their plans in advance, Larson asked Camp whether he was referring to the multi-plex or six-plex. Camp indicated he was talking about both. He would like to see a six-plex built in north Lincoln. If there is no definite policy, he believes the site in north Lincoln becomes subject to an annual challenge, and he believes that will tend to "chill" private investment in some six-plex complex.

If this is approved, Larson thinks it appears that someone who was planning a six-plex might back off because he knew there could be multi-plexes anywhere. Camp suggested that the result might be the opposite. A business entity could go ahead and might plan to have enough area for future expansion. Camp believes that, in the market place, we may have done ourselves a service by having the Downtown policy. It enhanced downtown, but, on the other hand, we are now in an evolution where theaters are not a main destination. There are a lot of other competing venues. What is going to happen to technology in another seven years? Maybe down the road Lincoln ends up with a multi-plex Downtown ringed by six-plexes. Larson suggested that with the changing technology it would seem that we should not plan a change seven years ahead. We could make that change five or six years from now. Camp agreed that to be a good observation; however, if we don't reaffirm what we have and take some action now, he thinks there will be an annual challenge to the theater policy by other developers and interests. We need to focus on whether to keep it or terminate it in seven years and send the message out to the business community. Larson believes that the denial of the previous challenge sent the message. Camp would rather see something really definitive.

Larson south confirmation as to whether Camp really cares whether this passes or not. Camp stated that from a free market standpoint, he would like to see it pass because it would send the message that Lincoln is open for business – the "can do" attitude. He thinks the market place will take care of itself, but he wants to live up to the commitment in the immediate seven years.

Taylor applauded the planning that has gone on thus far in terms of enhancing the Downtown. In consideration of the plans to build a theater complex on North 27th Street, he observed that it is not happening now, but it is still in the plan. When we look in terms of seven years and making an absolute change, how do you address the north theater in relation to the current plan design that is in place, as opposed to making a change that at this point is very speculative? Camp agreed that there is a plan on the drawing board to have a six-plex in north Lincoln. From the business owner's standpoint, if they see the current policy reversed in a year, why would any business owner want to go in and commit the investment for a six-plex when a multi-plex could come in and fully defeat their investment? That is where the 7-year termination would allow an operator some breathing room to get established. It opens up the playing field.

Taylor inquired as to how that would help the Downtown. Camp suggested that we need to continually strive to build our niche. Let's minimize what we do to interfere. He thinks this would further the development of the north Lincoln complex.

Strand believes that we would already have a six-plex in north Lincoln if the market was there. We made a promise to a theater company to build in Downtown Lincoln with financial backing. This proposal asks us to honor that time frame and allow open market. She agrees that the theater business is changing in many ways. At the same time, we are planning PUD's and trying to plan sustainable neighborhoods where there is walkable shopping and bike paths, etc., without having to go across town to accomplish something. She enjoys going to the movies. She lives near South Pointe. If the movie she wants to see is showing Downtown, she won't go. She'll go to the theater closest to her home or rent the DVD because of the distance and difficulty of getting Downtown. Is there going to be a change in infrastructure dollars to allow easier access to Downtown, or are we going to continue to promote entertainment in the neighborhoods? Camp believes this leads to the niche marketing approach. He believes the six-plexes have served very well. But, down the road, in seven years, he wants to see things opened up. He suspects that maybe multi-plexes are a dinosaur. It may be that the six-plex is an "oyster holding a pearl" for us. There may be growth within some of the existing six-plexes.

Esseks agrees about minimizing the constraints on investment and he suggested that we should periodically assess the regulations and constraints. He also agrees that this particular investment by Douglas should be protected for a certain period of time, and seven years seems reasonable, but he is struggling with whether to postpone the decision to end the theater policy or make a decision on the sunset time right now. He strongly urged that the decision should hinge on whether we have evidence that the Downtown really benefits from the current policy. Do we have evidence that the limitation of a multi-plex beyond six screens makes a difference in the economic health of Downtown? Camp responded, stating that he is glad the Grand Theatre was constructed. But, in 2005, the national theater attendance was down; however, he acknowledged that Lincoln did much better than the national average. The Grand Theatre fits in well with a lot of other activities and the University. He is glad we have had the policy. Downtown is the heart of Lincoln. If that heart is to exist, we have to make sure it does so in a way that it keeps up with the times. That is where all of his investments are located. He urged that the decision be made now. Even if we terminate in seven years, another Council could come in in two years and make a change. By setting or reaffirming the policy today, it will make it more difficult to make a change.

Opposition

1. Mark Hunzeker appeared on behalf of **Eiger Corporation.** The thought of repealing this policy is a good one, but the problem is that the timing is much too long. The repealing of this policy should be immediate, not seven years hence. The theater policy was a bad idea when

it was adopted in the first place. It is still a bad idea and it should be repealed now. The result of this policy has been the consolidation of ownership of all theaters and construction of an insurmountable barrier of entry into that business. Regardless of what happens with this ordinance, Hunzeker advised that this issue will not go away and will have to be dealt with in a time frame shorter than seven years. He stated that the annual payment of $250,000 in real estate taxes on the property where his client proposes to place a multi-plex theater at Prairie Lake shopping center will dictate bringing this issue before the Commission again prior to the expiration of seven years. The demand is there and the need is there. He had to stand outdoors in mid-January just last week to see a movie that has been out for two months, waiting in line to get a ticket and got the last two seats in the auditorium. He does not think that experience would have taken place downtown. Hunzeker believes that the time frame in this proposal is much too long and he requested that the Commission amend the proposal to eliminate this restriction as of January 1, 2007, as opposed to 2013.

2. Don Wesely appeared on behalf of **Douglas Theatre Company** and read their statement into the record, which states, in part, that:

> ...The Douglas Theatre Company is not taking a position on this proposal at this time. However, we wish to take this opportunity to remind the Planning Commission that the City of Lincoln and the Douglas Theatre Company entered into a Redevelopment Agreement in 2003 that has a direct bearing on this proposal. The Redevelopment Agreement was the key to the decision to build The Grand Theatre downtown.
>
> The Redevelopment Agreement states (that) 'Douglas Theatre Company has been induced to enter into this agreement in part based on the increased incremental valuation of the Project Area attributable to the City's Current Theater Policy. So long as any of the Bonds issued with respect to the Project Area remain outstanding and unpaid, the City agrees: a) to use its best efforts to maintain and duly enforce the current B-5 zoning restrictions that prohibit theater complexes of seven or more screens and b) that if the City takes any affirmative action resulting in a competing theater complex of seven or more screens actually opening for business within the City of Lincoln, the City agrees that the valuation of the Redeveloper Improvements are subject to reduction for the actual loss of rental income. The City acknowledges that the Valuation of the Redeveloper Improvements upon completion assumes the Theater Policy is in place and will remain so until the Final Bond Maturity Date.' The Final Bond Maturity Date is December 31, 2014. This is two years later than the proposal before you to sunset the Theater Policy on January 1, 2013.
>
> We bring this to your attention to make it clear there is an existing legal obligation that the City of Lincoln has entered into that calls for the Theater Policy to continue through the year 2014. This legal obligation resulted in the private investment by the Douglas Theatre Company, and the public investment, through Tax Increment Financing on

> behalf of the City of Lincoln, which resulted in the Grand Theatre being built. The Douglas Theatre Company worked very cooperatively with the City of Lincoln on this important project. We value our cooperative relationship with the City of Lincoln. That is why we are taking no position on this proposal today. However, we would appreciate further information regarding this proposal's impact on the existing Redevelopment Agreement we have with the City of Lincoln.

Esseks inquired as to the likely financial implications for the City if this amendment is approved. Wesely suggested that if, because of a competing multi-plex, we are not getting the attendance Downtown, the value of the project reduces. Then the value of the property is reduced and the city has to accept the obligation to pay off those bonds to cover that difference.

Dallas McGee of **Urban Development** advised that the Redevelopment Agreement was approved in order to get the Grand Theatre built. The tax increment financing goes through the end of 2014, two years after the seven years would be in effect. From a practical standpoint, if a theater of more than six screens was built in 2013, there would be a few steps that would need to be followed in order to follow through on the provisions in the Redevelopment Agreement. There would need to be documentation that there is an impact on the Grand Theatre in terms of attendance. The theater consultant indicated that there would be an impact on the Grand as well as others, including South Pointe and Edgewood. The consultant indicated that the pie would not get larger – it would just be divided differently. The impact in terms of loss of income would be given to the County Assessor to evaluate the value of the Grand Theatre. If the County Assessor determines that the Grand Theatre is not valued as high as it has been, they would then lower the value and there would be less taxes generated by the Grand. From a practical standpoint, that process in documenting the loss of income, etc., would very likely take the two years, but the agreement that was approved when the Grand was built says that the city will do everything it can to keep that agreement in place through the duration, which is December 2014.

Wesely added that there are other legal recourses that would be available to Douglas Theatre in addition to the valuation issue.

Staff questions

Esseks inquired whether the consultant or anyone else tried to measure the contribution that the Grand Theatre makes to the welfare of the Downtown. Marvin Krout stated, "no, Keith Thompson did not look at the secondary benefits." There was an earlier study when the theater policy was first enacted that tried to assess the secondary impacts on the food and drinking industry by bringing people into the Downtown area. That study was done 20 years ago, but there was an estimate of who would stop before and after for food and drink. The impact was something less a million dollars a year.

Carroll asked staff to review permitted use versus special permit use in B-5. Krout reminded the Commission that this was not the staff's application. The staff was trying to interpret the intent, and he believes the intent was to open it up and treat it like other uses. There would be no restrictions and it would not be subjected to a case-by-case evaluation.

The theater use could be considered in the decision on the zone change to B-5. There is potential for B-5 zoning to be examined in a closer way looking at the impact on retail spending in the community. A compromise could be to adopt the sunset that eliminates the screen limitation, but allow the theater complex by special permit.

Krout further stated that the theater policy is still valid. The staff is reluctant to create circumstances where we start sunsetting ordinances. You've heard testimony that creating a 7-year sunset is not going to prevent Eiger Corporation from coming back sooner than 7 years. There is nothing the Planning Commission or the City Council can do this month or next month that is going to guarantee what the story is going to be seven years from now. There is no certainty that a sunset is going to remain in effect and that everyone is going to respect it for seven years. Generally, the staff would only recommend sunsets where we are trying something new and then be forced to re-evaluate it. The special permitted use would allow a case-by-case evaluation in the B-5 districts.

Krout stated that the staff is perfectly happy with the policy as it stands now and is perfectly willing to re-evaluate it on a case-by-case basis.

Strand asked Krout whether the staff would recommend denial of every special permit because it is not in conformance with the Comprehensive Plan. Krout responded, stating that the staff would evaluate the impact on Downtown and the existing theaters. A growing market would be one of the deciding factors. He stated that the staff would not automatically recommend denial just because it was contrary to the theater policy.

Sunderman recalled that the City Council vote on the Eiger application back last summer was 4-3, so it wasn't strong one way or the other.

Response by the Applicant

Camp expressed appreciation for the excellent comments. He would like to come up with a stronger position one way or the other. The certainty is important for Lincoln, whether it be to stay with the existing policy or terminate it in seven years. If we don't do something with a degree of certainty, he does not expect the north complex to proceed.

Taylor asked for clarification of the Redevelopment Agreement with Douglas Theatre Company. Camp reiterated that it is a TIF agreement between the city and Douglas which states when the TIF would be paid off through the tax payments assessed to the Grand

Theatre. Future tax assessment on the Grand Theatre would then go to the variety of taxing authorities. That schedule has nothing to do with the Downtown theater policy; however, the language read into the record also ratifies the fact that the city would do everything in its power to uphold the Downtown policy to protect the ability of Douglas Theatre to pay that off, or there could be a lower valuation with a concurrent lowering of the actual taxes paid, and the city would have to make up that difference in TIF. Under Camp's proposal, there would be a two-year gap. In reality, however, toward the end of that time period, the amount left to be paid on the TIF would be smaller than the original 2.5 million dollars. Taylor wondered about using December, 2014 as the sunset date. Camp believes that a phase-in time of seven years makes some sense. He wants to stick with the seven years. No more, no less. He will only support his proposal in its form for seven years; otherwise, he would recommend continuing the existing policy.

ACTION BY PLANNING COMMISSION January 18, 2006

Taylor moved denial, seconded by Carroll.

Taylor believes that terminating the existing policy would fail to honor and respect the agreement that Douglas made with the city. He thinks it is important to honor that commitment. He also believes that we should always be open for review and testing, whether it is a split vote or whatever. It is very important that we go through this process in order to reconfirm the path that we want to take as a city. Since Camp will not compromise on the time frame, he will vote to deny.

Larson stated that he will also vote to deny. He believes this motion today is meaningless because this would not be any more definitive than the existing policy. It was challenged last year and that challenge failed. Whether we pass this or not, there will be other challenges that come along. There is no need to muddy the waters. We know that these challenges are going to come as Mr. Hunzeker said. Any new regional shopping center is going to want to put in a multi-plex. He does not want to encumber our future Planning Commission with this kind of a change.

Carroll agreed. The important issue is that the City Council agreed to the contract and it is our responsibility to keep those terms intact. There is no need at this time to change any of the policy. It is an agreement the City Council made and we should stand behind it.

Strand stated that she will vote against the motion. She thinks it is a good idea to have a sunset clause to give awareness that we are going to honor the agreement we made and send a signal to the future City Council and Planning Commission that we should honor the agreement, but that at some point we will go to the free market system to allow the competition. She would like to have changed the date to 2014.

Esseks is pleased that Camp brought this issue to the Planning Commission. Whenever a business or a particular interest has a privileged position, the benefits to the community should be evaluated. But he feels he has to vote to deny because the evidence is not before the Planning Commission that this privileged position should be terminated. He hopes the Planning Department will come forward with the necessary information to make a definitive decision about sunset.

Sunderman agreed with Strand. At some point in time this policy will be overturned.

Carlson stated that he will support the motion because it is the job of the Planning Commission to consider what comes forward. We have heard that challenges will arise. He does not believe the Planning Commission can predict seven years out. The reason the Downtown theater policy is so important is that we do have existing free market decisions that were made based on those policies. We have taxpayer dollars invested in the Downtown.

Motion to deny carried 6-2: Krieser, Taylor, Esseks, Carroll, Larson and Carlson voting 'yes'; Sunderman and Strand voting 'no'; Pearson absent. This is a recommendation to the City Council.

WAIVER NO. 05009
TO WAIVE THE PEDESTRIAN EASEMENT
ON PROPERTY GENERALLY LOCATED
AT S. 19TH STREET AND RIDGELINE DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 18, 2006

Members present: Krieser, Taylor, Esseks, Sunderman, Strand, Carroll, Larson and Carlson; Pearson absent.

Staff recommendation: Denial

Ex Parte Communications: None.

Additional information submitted for the record: Brian Will of Planning staff submitted a letter in opposition.

Proponents

1. Pace Woods, the applicant and developer of Rolling Hills Addition, made the presentation. He has been developing land in Lincoln and Lancaster County and southern Nebraska for over 45 years. Under the new procedures for final plats, he would not ordinarily bring this forward, except to correct a problem and the problem is merely to remove a pedestrian easement. The City properly sent a letter to the residents in the general area about his concern with the

pedestrian sidewalk requirement running between the back yards of four lots. Some of the neighbors misunderstood the request and thought it referred to removing the requirement for public sidewalks, and that is not the case. Public sidewalks on all streets in Rolling Hills will be built. This refers only to a pedestrian easement running from Rolling Hills Court to South 19th Street through the back yards of four lots.

Woods went on to explain that when the final plat of the Rolling Hills Original Addition was approved, there was no requirement for a pedestrian easement forwarded to the City Council. It was only at the last moment when then Council Member Werner brought up a suggestion for a sidewalk from Rolling Hills Court over one street to 19th Street. Woods advised that due to the grade of the land and the configuration of the lot line, it is impossible to put a pedestrian sidewalk leading toward the school, either to the east or the south, and he was then asked if he would agree to one to the west. Woods wanted to move the plat forward and frankly, he did not have an opportunity to check with anyone such as those interested in living in the area, so he agreed to the sidewalk.

Woods advised that this sidewalk requirement has now become a distinct problem to the families interested in living in the area and the builders. It affects four back yards. He had to cancel the contract on one of the lots because the family did not want this sidewalk constructed. This pedestrian easement will have an effect on the aesthetics of the area and the safety of the children. There are a lot of children living in this area. This sort of pedestrian easement with fences built by it is not only a safety problem but it does not look good. He agrees with the concept of bringing additional amenities to additions. He has spent money enhancing this particular area way beyond what has been required. He is interested in keeping an area filled with amenities, but this pedestrian easement leads to no amenity. It adds no amenity. Instead of toward the middle school, it runs to the west and is blocked by Lincoln Memorial Cemetery. Woods stated that he supports pedestrian easements when used for destination purposes and when they provide amenities to the area. This does neither. Does this route shorten the distance from someone who lives in the cul-de-sac to the middle school? Yes, but only by one-tenth of a mile. It does not enhance the walking opportunity for children or adults in the area. He emphasized that this pedestrian easement clearly does not provide a destination condition. It provides no additional amenities to the families. It creates an eyesore and provides potential problems for safety. The Planning Commission did not include this easement in the original approval of the final plat. It was added by the City Council at the last minute. Please correct this matter in the name of a healthy and wise land use plan.

2. Jason Thiellen of **Engineering Design Consultants** appeared on behalf of the applicant in favor of removing the pedestrian easement between Rolling Hills Court and South 19th Street. Does this easement take people somewhere? No, it does not. It goes toward the cemetery and there is only one-tenth of a mile difference between people in the cul-de-sac going around towards the school and those coming across the pedestrian easement.

Thiellen further explained that the reason this application has been brought forward is because the pedestrian easement is a requirement of the subdivision ordinance, i.e. when a block exceeds 1,000 ft., it requires a pedestrian easement. He showed a map of the area which showed three pedestrian easements which are destination easements. He has counted 18 blocks that exceed 1,000' that do not have pedestrian easements. Out of those 18 blocks, 10 blocks exceed the maximum of 1,320' block length for a cross street. Therefore, it appears that there is a standard in this area that pedestrian movements or easements are not a requirement. This was added on at the end of the City Council decision on the plat. Mr. Woods has spent two years trying to market these lots and people do not want to live next to a pedestrian easement for the reason of safety and an eyesore. Thiellen then showed photographs of other pedestrian easements to demonstrate what homeowners and future homeowners fear, i.e. the "cattle shoot" look. It is also a target for graffiti. The subject pedestrian easement is not a destination easement. It goes nowhere. Home builders and homeowners do not care to live next to easements like this and Mr. Woods is having difficulty selling the lots because of it.

Carroll observed that if you lived on Rolling Hills Court and you wanted to walk south to the school, you would have to walk north all the way up to Davenport Drive and then cut over to 21st Street and then south. You would have to go out of your way quite a ways in order to go to school without the pedestrian easement. Isn't that the purpose of the easement, i.e. to allow people to have access south? Thiellen agreed that it does shorten the distance but only by about 500 feet. If pedestrian circulation was such a critical issue in this neighborhood, he would think there would be a lot more of those easements located between the blocks. Carroll believes it is a lot more than 500 feet if you live at the southern end of Rolling Hills Court. Thiellen demonstrated where they took the 500' measurement on the map. Without the pedestrian easement, it is .73 miles. With the pedestrian easement it is .59 miles. It is not significantly longer. Carroll disagreed. He believes it doubles back a long distance.

Sunderman asked whether these four lots are the only lots that have not been sold. Thiellen acknowledged that there are more.

3. Fred Hoppe, 1600 Stonyhill, testified on behalf of the applicant, **Woods Investment Company.** He pointed out that all of the pedestrian easements in this area are destination easements. He counted 17 easements which have been omitted from the required standards. This is a request for another omission. This easement is impeding the sales in the area. The developer is concerned that it will create a "cattle shoot". The people in this neighborhood fence their back yards and people do not want people walking through their back yards. Hoppe suggested that not many kids will walk over half a mile to school today. You just don't see it happen very often anymore. The easement will not be frequently used. The flow of traffic goes down to the park to the south. The terrain does not allow a pedestrian easement to the east or south. The pedestrian easement to the west makes no sense.

There was no testimony in opposition.

Staff questions

Esseks asked staff to review the theory behind requiring a pedestrian easement. Brian Will of Planning staff advised that the Comprehensive Plan talks about connectivity and access; facilitating pedestrian traffic when possible; and alleviating vehicular traffic when possible. The ordinance talks about block length of 1320', or when they are in excess of 1000' in length, a pedestrian sidewalk is required. It is to facilitate accessibility and facilitate pedestrians and people getting out to walk.

Will explained that when this preliminary plat was approved, the pedestrian sidewalk was approved from the south edge of Rolling Hills Court down to Southern Light Drive. The preliminary plat was subsequently amended to provide for the roundabouts and a boulevard type street to the south. It was with that amendment to this plat that no longer provided the straight alignment south of Rolling Hills Court. Staff noted at that time that that was the best location for a sidewalk. At that time, the applicant chose and proposed to locate the sidewalk in its current location.

Esseks noted that ideally, this plat would have been coordinated with the plat below with a straight shot down toward the school. Will agreed that would have been optimum.

Esseks wondered about how people use these pedestrian easements. Are they only used to go to school or for walking, etc.? Will stated that the intent is to try to plan for the full range to accommodate both children going to school, recreational, going to work, closer to shopping, etc.

Esseks inquired whether there is any evidence that these tall fences are likely to be constructed. Will agreed that there are examples where fences have been constructed along these easements, but that is not always the case.

Strand inquired as to the responsibility for maintenance of the easement. Will advised that initially, it is the responsibility of the developer but it is typically passed on to the homeowners association. Strand noted that every year the Planning Commission reviews a lot of requests by neighborhoods not wanting these easements and they seek waivers. Will suggested that until there is some change in the policy, this gets to the goals of the Comprehensive Plan to facilitate pedestrian access to alleviate the need for cars on the streets, etc.

With regard to maintenance, Ray Hill of Planning staff clarified that if the easement is on private property, then the property owner is responsible for the maintenance. Most of the smaller pedestrian easements are on individual lots. Strand believes this in essence creates a corner lot without having a corner. Hill acknowledged that the pedestrian easement and

sidewalk is purposely located on one or the other lots so there is no question who is responsible for the maintenance. Strand presumed then that any liability rests with the home owner. Hill did not know the answer.

Will confirmed that the letter in opposition is from a property owner outside of the boundaries of this plat.

Carlson pointed out that developers could certainly build to avoid these pedestrian ways by meeting the design standards for block length.

Carlson inquired how this pedestrian easement was not part of the Planning Commission recommendation to the City Council. Will explained that the original preliminary plat showed the pedestrian easement to the south. The developer then came back in 2003 and replatted that portion of the CUP. Part of that replat reconfigured the streets showing a boulevard for Ridgeline Drive and the roundabouts. It was at that point in time that the pedestrian easement had to be relocated. He believes that this pedestrian easement would have been approved by the Planning Commission.

Response by the Applicant

Fred Hoppe noted that when this reached the Planning Commission in 2003, the plat had no pedestrian easement. It was added at the City Council by Terry Werner in the last two minutes of the hearing. South doesn't work because of elevations; east doesn't work because of elevations; and this particular place happened to have an alignment of the four lots so that you could go down the centerline. But if you really analyze Rolling Hills and Rolling Hills Ridge, the traffic for pedestrians in this area goes south to all the walking paths and all the streets that connect somewhere. This one does not. You have to back track. We are not trying to change the design standards. We are asking for a waiver because such waivers happen to be common in this area. There are 18 blocks that exceed the standards and he counted 17 pedestrian easements that should be there but they do not exist. This is a place for a waiver. This easement has complicated the development and sales in this addition.

ACTION BY PLANNING COMMISSION: January 18, 2006

Taylor moved to approve the waiver, seconded by Strand.

Taylor agrees that this easement would not be used by a lot of children. Maybe whoever builds there would put up the fence but the aesthetics of that area would speak against that. Protection is not so much the issue. On the other hand, he believes in sidewalks and the goals of the Comprehensive Plan, but he is more in favor of it in areas where you are going to have higher usage of it. This area is not heavily populated and there are plenty of large yards for exercise, etc. He agrees that this waiver should be granted in this particular case.

Strand stated that she supports the waiver because these pedestrian easements are not popular. They are typically on cul-de-sac type streets where the property owners do not want them and they continue to ask that they be removed; kids are not walking and biking to and from school. She does not think the easement is going to make any difference.

Carroll stated that he is opposed to the waiver because of the connectivity issue. Kids don't walk to school, but we want to make sure we don't make a reason that they can't get there by walking. It is important for people to come out of that cul-de-sac and have some place to walk south. The "cattle shoot" problem is easily taken care of by covenants for chain link fence only and no solid fences. As far as value of the land, if you are going to sell those lots, they might be tougher to sell but they will sell.

Larson stated that he will vote to approve because he does not see this sidewalk leading anywhere and it creates corner lots and increases the liability of the homeowners that are involved. He does not believe it is going to do that much good.

Esseks commented that if we believe in connectivity, we should either have a pedestrian easement leading out of the cul-de-sac or we shouldn't have cul-de-sacs.

Motion to approve carried 5-3: Krieser, Taylor, Sunderman, Strand and Larson voting 'yes'; Esseks, Carroll and Carlson voting 'no'; Pearson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 1, 2006.

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